



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,001	10/12/2000	Jeffery D. Amett	023727-1701	7673
30542	7590	09/18/2007		
FOLEY & LARDNER LLP P.O. BOX 80278 SAN DIEGO, CA 92138-0278			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 09/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/689,001
Filing Date: October 12, 2000
Appellant(s): ARNETT ET AL.

MAILED
SEP 18 2007
Group 3700

Richard J. Warburg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 2, 2007 appealing from the Office action mailed November 17, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 6-9, 12, 26 and 29-31.

Claim 10 stands withdrawn from consideration as not directed to the elected specie.

Claims 1-5, 11, 13-25 and 27-28 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

Art Unit: 3781

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Patents:

4,861,078	MUNOZ	8-1989
4,838,586	HENNE	6-1989
4,109,819	KUSHMAN et al.	8-1978
3,709,538	SEITZ et al.	1-1973

Official Notice and Prior Art Admissions:

Official notice was taken in the final Office action mailed October 21, 2005 that plastic, rubber and metal are well known bushing materials. This Official notice was not been seasonally challenged in appellant's response filed March 21, 2006. Therefore, the Official notice was treated as a prior art admission in the next Office action, the first Office action mailed April 27, 2006.

Art Unit: 3781

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Seitz

Claims 6-9, 12, 26 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seitz et al. (Seitz).

Seitz discloses a latch system for a container, the container including a first section and a second section, the latch comprises a latch pin (rod 21) mounted on the first section (cover 12), a deflectable member (one or both of the bushings 23) and a latch (L member 14) pivotally coupled to the latch pin so that the deflectable member is positioned between the latch pin and the latch, the latch removably engages the second section (receptacle 11), the deflectable member is configured to absorb relative compression movement or movement of the lid downwardly which will move the latch pin downwardly with respect to the receptacle 11 which remains relatively stationary such as when the horizontal leg 15 of the latch is depressed or pushed downwardly on in order to release the engagement of complementary projections 26 and 28.

Re claims 6, 26, 29 and 31, deflectable member (bushing 23) is comprised of plastic material as stated in line 41 of column 3. The plastic material absorbs relative compression movement.

Re claims 6, 26 and 29-31, Seitz discloses the plastic bushing material. Seitz discloses the invention except for the rubber and metal material. The Official notice taken in the Office action mailed October 21, 2005 was not been seasonally challenged by appellant's response filed March 21, 2006. Therefore, the Official notice is now treated as an applicant admission of prior

Art Unit: 3781

art. Also, there is a lack of criticality to the material specified as evidenced by applicant's disclosure of plastic, rubber and metal as acceptable materials. It would have been obvious to provide either plastic, rubber or metal as the material of the bushing in order to provide a material with the specific quality or qualities desired, plastic and rubber are known for easy moldability, self-lubricating, anti-friction, noise-reduction, maintenance reduction and strength in absorbing compression and metal is known for high yield strength, durability and strength in absorbing compression.

Henne, Munoz and Kushman:

Claims 6-9, 12, 26 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henne, Munoz or Kushman et al. (Kushman). Each of these references is applied individually.

Henne and Munoz are similar oven door latches. Henne discloses a latch system for a container, the container including a first section and a second section, the latch comprises a latch pin (30) mounted on the first section (body of the oven), a deflectable member (bushing 66) and a latch (20) pivotally coupled to the latch pin so that the deflectable member is positioned between the latch pin and the latch, the latch removably engages the second section (oven door 34), the deflectable member is configured to absorb relative compression movement or movement of the lid toward the oven body which will move the latch (20) with respect to the oven body and the pin 30 which are relatively stationary. Munoz structure is similar and would similarly read on the claims.

Art Unit: 3781

Kushman discloses a latch system for a container, the container including a first section and a second section, the latch comprises a latch pin (axle 39) mounted on the first section (storage bin or vessel body), a deflectable member (bushing 41) and a latch (34) pivotally coupled to the latch pin so that the deflectable member is positioned between the latch pin and the latch, the latch removably engages the second section (roof 25), the deflectable member is configured to absorb relative compression movement or movement of the roof downwardly which will move the latch downwardly with respect to the vessel body and the latch pin (axle 39).

Re claims 6, 26 and 29-31, Henne, Munoz and Kushman do not teach a material for the bushing. The Official notice taken in the Office action mailed October 21, 2005 was not been seasonally challenged by appellant's response filed March 21, 2006. Therefore, the Official notice that rubber, plastic and metal bushing materials are well known is now treated as an applicant admission of prior art. Also, there is a lack of criticality to the material specified as evidenced by applicant's disclosure of plastic, rubber and metal as acceptable materials. It would have been obvious to provide either plastic, rubber or metal as the material of the bushing in order to provide a material with the specific quality or qualities desired, plastic and rubber are known for easy moldability, self-lubricating, anti-friction, noise-reduction, maintenance reduction and strength in absorbing compression and metal is known for high yield strength, durability and strength in absorbing compression.

(10) Response to Argument

Appellant states that (1) the bushings shown in the references provide rotational movement and (2) there is no teaching that the bushings "deflect" in any manner that would

Art Unit: 3781

absorb compression movement. Although the bushings may allow rotational movement, this doesn't diminish the capacity of the bushings to also compress or at least absorb compression movement. All materials, even rigid material, can be compressed. There are materials that compress to a greater degree than rigid materials. For example, certain flexible rubbers, elastic foam and other elastic materials compress more readily than rigid rubber, metal, steel and rigid plastic. It is noted that metal, a typically rigid material, is claimed as a compressible deflectable member material. Appellant characterizes the bushings of the prior art as "solid." Solid materials are materials in a solid phase rather than liquid or gas phase. Appellant discloses materials that are solid insofar as no liquid or gas materials are claimed. Perhaps appellant has meant to characterize the prior art materials as "rigid" with diminished compressibility as compared to other solid, non-rigid, more compressible materials.

A material difference between a less compressible, rigid element and a more compressible, non-rigid element is patentable. However, appellant has not claimed a compressible element or a compressible material. Appellant claims, "the deflectable member is configured to absorb relative compression movement between the first section and second section." The claim is much broader than identifying one element and stating that this element is compressible or is made of a compressible material. The deflectable member could contain several elements which are not individually compressible but which together act to absorb compression movement. The compression motion could be absorbed by another mechanical component other than the bushing such as a spring or a series of mechanical linkages that absorb the compression movement.

Art Unit: 3781

Appellant refers to the deflectable rib and has noted that the references clearly do not show a deflectable rib. The deflectable rib is never claimed. The “deflectable member” of the invention is more broadly claimed than as a member required to have ribs or deflectable ribs. Ribs do not need to be present. The bushings shown in the prior art are all deflectable members capable of movement and capable of moving in response to compression movement. The bushings of the prior art are configured to absorb compression movement.

Seitz discloses a container that is portable because its size is relatively small. Seitz also has a simple design with relatively few parts that make it easier to discern the components of the latch and the deflectable member or bushing. Henne and Munoz are oven latches. Although an oven is less portable than the shock-resistant case of the present invention, there is no claim language that differentiates the size or portability of the shock-resistant case with the relative non-portability of an oven which can't be easily carried by one person. Claim 1 is directed to a latch system for a container. Claim 26 is narrower and is directed to a container. Kushman discloses a latch for bins or silos. Again, there is no claim language that differentiates the size or portability of the shock-resistant case. The latches disclosed by Henne, Munoz and Kushman are more complex than Seitz and include mechanical linkages and springs.

Appellant states that the prior art is not for shock resistance. The claims don't have any limitation or suggestion that the latch is shock-resistant or has been designed for shock resistance.

Appellant challenges the Official notice within this brief. This challenge is not timely and is considered late. The Office is not obligated to respond to this challenge. A timely

Art Unit: 3781

challenge could have been filed on March 21, 2006 with appellant's response to the final Office action mailed October 21, 2005. .

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3781

Evidence Appendix

No response is deemed necessary since appellant has not submitted further evidence.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Stephen J. Castellano/
Stephen J. Castellano
Primary Examiner

Conferees:



Anthony D. Stashick

ANTHONY D. STASHICK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700



Thomas C. Barrett

TC 3700 TCB